

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0539**  
**Underground Storage Tank Fee**  
**For the Years 1991-1995**

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**ISSUE**

**I. Underground Storage Tank Fee-Imposition**

**Authority:** IC §13-23-12-1, IC §13-12-12-4, IC § 6-8.1-1-1, IC § 6-8.1-5-1 (b).

The taxpayer protests the imposition of the underground storage tank fees.

**STATEMENT OF FACTS**

The taxpayer owns a convenience store with underground storage tanks. The Indiana Department of Environmental Management (IDEM) determined that the fees had not been paid for the years 1991-1995. The Indiana Department of Revenue (department) assessed the additional underground storage tank fees, interest, and penalty. The taxpayer protested the imposition of the fees, interest, and penalty. A hearing was held and this Letter of Findings results.

**I. Underground Storage Tank Fee- Imposition**

**DISCUSSION**

IC §13-23-12-1 imposes a fee on underground storage tanks. Although IDEM administers the state regulation of underground storage tanks, IC §13-12-12-4 mandates that the department collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "any other tax or fee that the department is required to collect or administer." Since the department, pursuant to statute, must collect the underground storage tank fees, these fees constitute listed taxes. All of the laws and regulations concerning the department's collection of listed taxes apply to the department's collection of the underground storage tank fees. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1 (b).

The fee on underground storage tanks is imposed at IC §13-23-12-1 as follows:

- (a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:
- (1) rules adopted under IC §13-23-1-2; or
  - (2) a requirement imposed by the commissioner before the adoption of rules under IC 13-23-1-2;
- shall pay to the department of state revenue an annual registration fee.

Pursuant to the imposition statute, the underground storage tank fee is imposed on all underground storage tanks open and available for use on July 1 of the year. The party who owns the property during the tax period is the person liable for payment of the underground storage tank fees.

The taxpayer produced documentation substantiating that he purchased the convenience store property including the underground storage tanks on which the fees were assessed on January 21, 1999. The taxpayer was not the owner of the underground storage tanks during the tax period 1991-1995. Therefore the taxpayer is not responsible for the payment of the underground storage tank fees due for the years 1991-1995.

### **FINDING**

The taxpayer's protest to the assessment of the underground storage tank fees is sustained.

The taxpayer is admonished that if the underground storage tank fees are not paid in full, the taxpayer will not be eligible for full payments from the Excess Liability Trust Fund in the event that there is a gasoline spill or other environmental problem resulting from the taxpayer's underground storage tanks.